

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ABDULKADIR OSMAN GARGAR,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. 2:24-cv-00128-TMC-GJL

ORDER FOR SERVICE, ANSWER,
AND SUBSTITUTION OF
RESPONDENT, § 2254 PETITION

This is a federal habeas action filed under 28 U.S.C. § 2254. Having reviewed the Petition (Dkt. 5), the Court **ORDERS** the following:

(1) Substitution of Respondent

Petitioner named the State of Washington as Respondent. Dkt. 5. However, the proper respondent to a habeas petition is the “person who has custody over [the petitioner].” 28 U.S.C. §§ 2242 and 2243; *Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). Petitioner is currently housed at Western State Hospital and the Chief Executive Officer of that facility is Mark Thompson. Accordingly, the

1 Clerk of Court is directed to **SUBSTITUTE** Mark Thompson as the Respondent in this action.
2 The Clerk is also directed to **UPDATE** the case title.

3 (2) Service

4 The Clerk shall arrange for service, by first class mail upon Respondent and by e-mail
5 upon the Attorney General of the State of Washington, of copies of the Petition, any other
6 documents filed in support of the Petition, and this Order. The Clerk shall also direct a copy of
7 this Order and of the Court's *pro se* instruction sheet to Petitioner.

8 (3) Answer

9 Within ***forty-five (45) days*** after such service, Respondent shall file and serve an answer
10 in accordance with Rule 5 of the Rules Governing Section 2254 Cases in United States District
11 Courts. As part of such answer, Respondent shall state whether Petitioner has exhausted
12 available state remedies and whether an evidentiary hearing is necessary. Respondent shall not
13 file a dispositive motion in place of an answer without first showing cause as to why an answer is
14 inadequate. Respondent shall file the answer with the Clerk of the Court and serve a copy of the
15 answer on Petitioner.

16 Respondent shall file the answer with the Clerk of the Court and shall serve a copy upon
17 Petitioner. The answer will be treated in accordance with LCR 7. Accordingly, on the face of the
18 answer, Respondent shall note it for consideration on the fourth Friday after filing. Petitioner
19 may file and serve a response not later than the Monday immediately preceding the Friday
20 designated for consideration of the matter, and Respondent may file and serve a reply not later
21 than the Friday designated for consideration of the matter.

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(4) Filing by Parties, Generally

All attorneys admitted to practice before this Court are required to file documents electronically via the Court's CM/ECF system. Petitioner may continue to file a paper original with the Clerk of Courts. All filings, whether filed electronically or in traditional paper format, must indicate in the upper right-hand corner the name of the Magistrate Judge to whom the document is directed.

Any document filed with the Court must be accompanied by proof that it has been served upon all parties that have entered a notice of appearance in the underlying matter.

(5) Motions

Any request for court action shall be set forth in a motion, properly filed and served. Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a part of the motion itself and not in a separate document. The motion shall include in its caption (immediately below the title of the motion) a designation of the date the motion is to be noted for consideration on the Court's motion calendar.

(6) Direct Communications with District Judge or Magistrate Judge

No direct communication is to take place with the District Judge or Magistrate Judge regarding this case. All relevant information and papers are to be directed to the Clerk.

Dated this 16th day of February, 2024.

A handwritten signature in black ink, appearing to read 'Grady J. Leupold', is written over a solid black horizontal line.

Grady J. Leupold
United States Magistrate Judge